

luff v. Stanley, 66 Md. 220; Downes v. Friel, 57 Md. 536; Bolgiano v. Cooke, 19 Md. 392. And see Scarlett v. Robinson, 112 Md. 206.

Generally.

A bill held to have been filed under this section, and not under section 57, and hence, that the bill need not be retained in order that a guardian *ad litem* might be appointed under section 58. Where the guardian joins in the bill, and there is proof that the property is not susceptible of partition without loss and injury, a sale may be decreed. Koontz v. Koontz, 79 Md. 360; Benson v. Benson, 70 Md. 257; Earle v. Turton, 26 Md. 33; Lawes v. Lumpkin, 18 Md. 340; Dalrymple v. Taneyhill, 4 Md. Ch. 173. Cf. Mumma v. Brinton, 77 Md. 200; Gill v. Wells, 59 Md. 499.

This section distinguished from section 57. Where lands of an infant are sold under this section, the proceeds go to the guardian. Benson v. Benson, 70 Md. 257; Bolgiano v. Cooke, 19 Md. 392.

A proceeding under this section distinguished from proceedings under article 46, section 32, *et seq.* On a bill praying for partition and general relief, if the commissioners appointed to divide the land report that it is not susceptible of partition, and such report is ratified, the property may be sold and the proceeds distributed without amendment of the bill. Johnson v. Hoover, 75 Md. 489. And see Billingslea v. Baldwin, 23 Md. 114; Campbell v. Lowe, 9 Md. 509; Tomlinson v. McKaig, 5 Gill, 274; Roser v. Slade, 3 Md. Ch. 91.

This section authorizes the sale of lands where they are held jointly, whether by descent or by purchase. This section is *in pari materia* with the act of 1831, ch. 311, and the act of 1839, ch. 23, and must be construed in connection with them. Billingslea v. Baldwin, 23 Md. 114. And see Smith v. Townshend, 27 Md. 390; Lawes v. Lumpkin, 18 Md. 340; Hewitt's Case, 3 Bl. 185. Cf. Roser v. Slade, 3 Md. Ch. 91.

It is only where property cannot be divided in kind without loss or injury that a sale may be had: proof held insufficient to authorize a sale and that the property should be divided in kind. A partition may be had without amendment of the bill where the prayer is for a sale and for general relief. Rowe v. Gillelan, 112 Md. 111.

Questions of title, and of adverse rights, can not be raised or passed on in partition proceedings. Jurisdiction under this section depends upon community of interest. Savary v. DaCamara, 60 Md. 147. And see Williams v. Harlan, 88 Md. 4; Boone v. Boone, 3 Md. Ch. 497.

Partition will not be denied because of the difficulty or inconvenience attending it. On a bill praying for a sale and general relief, partition may be had. Construction of the acts of 1875, ch. 72, and 1831, ch. 311. Campbell v. Lowe, 9 Md. 509.

Where the answer to a bill for the partition of a ground rent shows that the validity of an outstanding lease is questioned, the court should hold the bill for a reasonable time so that such validity may be tested. Partition or a sale will be decreed, although the expenses of the proceeding more than consume the value of the property. Brendel v. Klopp, 69 Md. 4.

A bill may be filed under this section for the sale of a remainder, owned jointly during the life of the life tenant. Downin v. Sprecher, 35 Md. 484; Billingslea v. Baldwin, 23 Md. 106.

Partition may be decreed although certain infant defendants are entitled to executory devises in the land sought to be sold. Harris v. Harris, 6 G. & J. 115.

Where land is sold under this section, the mutation from realty to personalty does not take place until the sale has been ratified and the purchaser has complied with its terms. Betts v. Wirt, 3 Md. Ch. 116.

Receivers are sometimes appointed to collect rents pending partition proceedings—see notes to section 201. Baker v. Baker, 108 Md. 277.

In order that a sale might be decreed under the act of 1785, ch. 72, section 12, it must have been proved that all parties interested would be benefited by the sale. The fact that infants were complainants did not dispense with the necessity of such proof, nor did the answer of an infant, nor the answer of adult defendants, admitting such facts. Amendment. Watson v. Godwin, 4 Md. Ch. 25. Cf. House v. Wiles, 12 G. & J. 338.

As to the proof of the title of the co-owners, and other matters necessary to be proved under this section, see Calwell v. Boyer, 8 G. & J. 146; Warfield v. Gambrill, 1 G. & J. 503.